

UNITED STATES *DISTRICT* COURT  
FOR THE DISTRICT OF  
COLUMBIA  
KINGMAN PARK CIVIC ASSOCIATION, et al.

Plaintiffs, )  
Case No. 1:98CV00758  
v.

UNITED STATES ENVIRONMENTAL  
AGENCY, et al.

Judge Colleen Kollar-Kotelly  
**ETI ED /**

Defendants. JUN 13 2000

NWMAYER WHITTINGTON, CLERK U.S. DISTRICT COURT

CONSENT DECREE

WHEREAS, the remaining count of this case involves a claim by Kingman Park Civic Association, Friends of the Earth, and Anacostia Watershed Society ("Plaintiffs") under the Clean Water Act, 33 U.S.C. § 1251, et seq. ("Act" or CWA"), to compel the United States Environmental Protection Agency, and Carol M. Browner, Administrator, (collectively "EPA") to establish Total Maximum Daily Loads ("TMDLs") pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for waters within the District of Columbia ("the District");

WHEREAS, Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7 (b), (c), and (d), provide for (1) identification of waters for which certain controls are not stringent enough to achieve applicable water quality standards (the "Section 303(d) List"); (2) establishment of a priority ranking for such waters; and (3) establishment of TMDLs for pollutants for which those waters do not meet or are not expected to meet applicable water quality standards;

**WHEREAS, Counts 1, 2, and 3 of this action were dismissed by the Court without prejudice on February 15, 1999, pursuant to a joint motion filed by the parties on February 5, 1999; WHEREAS, Count 5 of this action was dismissed by the Court on August 31, 1999, pursuant to a motion filed by EPA on August 6, 1998;**

**WHEREAS the only remaining count of this action is Count 4, in which plaintiffs allege that EPA's failure to establish TMDL s for all of the District's water quality limited segments ("WQLSs") constitutes a failure to perform non discretionary duties under Section 303(d) of the CWA, 33 U.S.C. §1313(d);**

**WHEREAS, the District of Columbia Department of Health has represented that the District intends to establish TMDL s for all waters listed on the 1998 Section 303(d) list in accordance with the schedule set forth in the February 10, 2000 letter from T. Gordon, Senior Deputy Director for Operations, Department of Health, District of Columbia, to B. Campbell, Regional Administrator, Region 3, United States Environmental Protection Agency;**

**WHEREAS, EPA agrees to the NPDES reporting provisions in its capacity as the admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the, claims raised in Counts 4 and 5;**

**WHEREAS, by entering into this Consent Decree, Plaintiffs and EPA do not waive or limit an claim or defense, on any grounds, related to any final agency action taken pursuant to this Consent Decree, including EPA's approval, disapproval and/or development of Section 303(d) Lists and/or**

establishment of TMDLs in the District;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the claims raised in Counts 4 and 5 without protracted litigation, including a trial and/or appeal; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, adequate and equitable resolution of the claims raised in Counts 4 and 5;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed as follow:

**I. PARTIES**

1. The parties to this Consent Decree are, Plaintiffs and EPA. The parties understand that (a) Carol Browner is sued in her official capacity as Administrator of the United States Environmental Protection Agency, and (b) the obligations arising under this Consent Decree are to be performed by EPA and not by Carol Browner in her individual capacity.

**II. PARTIES BOUND**

2. This Consent Decree applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and EPA.

**III. JURISDICTION**

3. The Court retains jurisdiction for the purposes of resolving any disputes arising under the Consent Decree; issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, or enforce the terms of this Consent Decree; considering and resolving any requests for attorney's fees and costs; and granting any further relief as the interests of justice may require.

#### **IV. DEFINITIONS**

4. Unless otherwise expressly provided, terms used in this Consent Decree that are defined in the CWA or in implementing regulations shall have the meaning assigned to them therein. All references in this Decree to sections of the U.S. Code ("U.S.C."), the Code of Federal Regulations ("C.F.R.") and the District of Columbia Municipal Regulations ("D.C.M.R.") are to those sections as of the date of entry of this Consent Decree or as subsequently amended. For the purposes of this Decree, the following terms shall have the meanings provided below.

- a. "BOD" means biochemical oxygen demand.
- b. "Consent Decree" or "Decree" means this decree.
- c. "Day" means a calendar day unless expressly stated to be a working day. In determining any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.
- d. The "District" means the District of Columbia government, including its officers, agencies, departments and instrumentalities.
- e. "Effective Date" means the date upon which this Consent Decree is entered by the Court.
- f. "EPA" means the United States Environmental Protection Agency and Carol M. Browner (or successor), Administrator.
- g. "Establish" for purposes of this Consent Decree means final agency action taken by EPA establishing a TMDL.
- h. "Execute" or "Execution" means that all parties have fully signed original

this Consent Decree and have caused such documents to be delivered to each party.

i. "Metals" means the substances identified in Table 2 of Section 1104.6 of the District of Columbia's water quality standards. 21 D.C.M.R. § 1104.6 (Table 2).

j. "Organics" means the substances identified in Table 3 of Section 1104.6 of the District of Columbia's water quality standards. 21 D.C.M.R. § 1104.6 (Table 3).

k. "Plaintiffs" means the Kingman Park Civic Association, the Friends of the Earth, and the Anacostia Watershed Society.

l. "Section 303(d) List" means the list required to be submitted by Section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2), and 40 C.F.R. § 130.7(b).

m. "Submit" means the transmission by the District of a final TMDL to EPA for review or approval or disapproval under 33 U.S.C. § 1313(d)(2).

n. "Total Maximum Daily Load" or "TMDL" has the meaning provided at 33 U.S.C. § 1313(d)(1)(C) and 40 C.F.R. § 130.2(i).

o. "TSS" means total suspended solids.

p. The "United States" means the United States of America including its officers, agencies departments and instrumentalities.

q. "Water Quality Limited Segments" or "WQLS s" has the meaning provided at 40 C.F.R. § 130.20).

r. The "Anacostia Mainstem group" means the following WQLS s and pollutants identified on the District's 1998 Section 303(d) List: Upper Anacostia River (BOD, TSS); and Lower Anacostia River (BOD, TSS).

s. The "Anacostia Watershed group" means the following WQLSs and pollutants identified on the District's 1998 Section 303(d) List: Upper Anacostia River (Bacteria, Oil and Grease Organics, Metals); Lower Anacostia River (Bacteria, Oil and Grease, Organics, Metals); Upper Watts Branch (Organics, Bacteria, TSS); Lower Watts Branch (Organics, Bacteria, TSS); Kingman Lake (Organics, Bacteria, Metals, BOD, TSS, Oil and Grease); Fort Dupont Creek (Bacteria, Metals); Fort Chaplin (Bacteria, Metals); Fort Davis Tributary (Bacteria, Metals, BOD); Fort Stanton Tributary (Organics, Bacteria, Metals); Nash Run (Organics, Bacteria, Metals); Popes Branch (Organics, Bacteria, Metals); Texas Ave. Tributary (Organics, Bacteria, Metals); and Hickey Run (Organics, Bacteria).

t. The "Rock Creek Watershed group" means the following WQLSs and pollutants identified on the District's 1998 Section 303(d) List: Upper Rock Creek (Organics, Bacteria, Metals); Lower Rock Creek (Organics, Bacteria, Metals); Soapstone Creek (Organics); Broad Branch (Organics); Dumbarton Oaks (Organics); Fenwick Branch (Organics); Klinge Creek (Organics); Luzon Branch (Organics); Melvin Hazen Valley Branch (Organics); Normanstone Creek (Organics); Pinehurst Branch (Organics); Portal Branch (Organics); Piney Branch (Organics, Metals).

u. The "Miscellaneous Waters group" means the following WQLSs and pollutants identified on the District's 1998 Section 303(d) List: C&O Canal (Bacteria); Oxon Run (Organics, Bacteria, Metals); Washington Ship Channel (Organics, Bacteria, pH); Tidal Basin (Organics, Bacteria).

v. The "Potomac River Watershed group" means the following WQLSs and pollutants identified on the District's 1998 Section 303(d) List: Battery Kemble Creek (Bacteria, Metals);

Foundry Branch (Bacteria, Metals); Dalecarlia Tributary (organics, Bacteria); Upper Potomac River (Organics, Bacteria); Middle Potomac River (Organics, Bacteria, pH); Lower Potomac River (Organics, Bacteria).

## **V. TERMS OF AGREEMENT**

### **5. ESTABLISHMENT OF TMDL s**

(a) EPA emphasizes that, under the Clean Water Act, the District has primary responsibility for the establishment of TMDL s pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d). EPA expects the District to develop TMDL s for all WQLS s and pollutants on the District's 1998 Section 303(d) List and to submit those TMDLs to EPA for review and approval or disapproval. However,

subject to Paragraph 5(b) below, EPA shall establish TMDL s for the WQLS s and pollutants set forth below according to the following deadlines if the District fails to do so, or if EPA has not approved same TMDL s by the dates specified below:

(1) Anacostia Mainstem group - EPA expects the District to submit a final TMDL for each of the WQLS s and pollutants in the Anacostia Mainstem group to EPA by September 30, 2000. Subject to subparagraph (b) below, if by December 15, 2001 EPA has not approved TMDL s for each of the WQLS s and pollutants in the Anacostia Mainstem group, then EPA shall establish, by December 15, 2001, TMDL s for each of the WQLS s and pollutants in said group for which EPA has not approved TMDL s.

(2) Anacostia Watershed group - EPA expects the District to submit a final TMDL for each of the WQLS s and pollutants in the Anacostia Watershed group to EPA by September 30, 2001. Subject to subparagraph (b) below, if by March 31, 2003 EPA has not



approved TMDL s for each of the WQLSs and pollutants in the Anacostia Watershed group, then EPA shall establish, by March 31, 2003, TMDLs for each of the WQLSs and pollutants in said group for which *EPA* has not approved TMDLs.

(3) Rock Creek Watershed group - EPA expects the District to submit a final TMDL for each of the WQLSs and pollutants in the Rock Creek Watershed group to EPA by September 30, 2002. Subject to subparagraph (b) below, if by February 28, 2004 EPA has not approved TMDLs for each of the WQLSs and pollutants in the Rock Creek Watershed group, then EPA shall establish, by February 28, 2004, TMDLs for each of the WQLSs and pollutants in said group for which EPA has not approved TMDLs.

(4) Miscellaneous Waters group - *EPA* expects the District to submit a final TMDL for each of the WQLSs and pollutants in the Miscellaneous Waters group to EPA by September 30, 2003. Subject to subparagraph (b) below, if by December 15, 2004 EPA has not approved TMDLs for each of the WQLSs and pollutants in the Miscellaneous Waters group, then EPA shall establish, by December 15, 2004, TMDLs for each of the WQLSs and pollutants in said group for which EPA has not approved TMDLs.

(5) Potomac River Watershed group - EPA expects the District to submit a final TMDL for each of the WQLS s and pollutants in the Potomac River Watershed group to EPA by September 30, 2004. Subject to subparagraph (b) below, if by September 30, 2007 EPA has not approved TMDL s for each of the WQLS s and pollutants in the Potomac River Watershed group, then EPA shall establish, by September 30, 2007, TMDL s for each of the WQLS s and pollutants in said group for which EPA has not approved TMDL s.

(b) In fulfilling its obligations under this Consent Decree, EPA is under no obligation to establish a TMDL for any WQLS and pollutant if either (1) the District submits and EPA approves a TMDL for such WQLS and pollutant prior to the date by which EPA is required to establish such TMDL, or (2) EPA determines, consistent with 33 U.S.C. § 1313(d) and its implementing regulations, that such WQLS and pollutant does not need a TMDL, or (3) the District removes such WQLS and pollutant from its next or any subsequent Section 303(d) List and EPA approves said list (including the removal). With respect to subparagraph 5(b)(2) above, Plaintiffs' remedy for challenging any such EPA determination shall be through the dispute resolution provisions in Paragraph 11. In entering into this Consent Decree, Plaintiffs do not concede that any such determination would be consistent with 3 U.S.C. § 1313(d) and its implementing regulations.

(c) No later than 30 days after issuing any approval under Subparagraph 5(b)(1) or Subparagraph 5(b)(3) or making any determination under Subparagraph 5(b)(2), EPA shall provide a copy of said approval or determination (as the case may be) to Plaintiffs.

6.

#### **EPA REPORTING**

On February 28 of each year, EPA shall submit to Plaintiffs a report detailing EPA's progress in meeting the commitments of this Consent Decree during the previous calendar year and discussing certain other matters. The report shall include:

- (a) The identification of TMDL s established during the reporting period, including:
- (1) the WQLSs and pollutants for which EPA has approved TMDLs submitted by the district; by
  - (2) the WQLSs and pollutants for which EPA has established TMDL s for WQLS s

in the District;

(b) The identification of any WQLS s and pollutants included on the District's 1998 Section 303(d) List that either (1) EPA has determined during the reporting period do not need TMDL s as described in subparagraph 5(b)(2), including a description of the basis for such determination, or (2) the District has (with EPA approval) removed from its Section 303(d) List, as described in subparagraph 5(b)(3);

(c) The identification of any NPDES permits that authorize the discharge of the pollutant(s) of concern in any water for which EPA has approved and/or established TMDL s under this Decree. EPA will identify the pollutant(s) of concern contained in the TMDL and WQLS s to which that TMDL applies, including but not limited to a recital of applicable individual waste load allocations; and for each NPDES permit which may authorize the discharge of pollutants of concern into the water further identify (1) the date that such NPDES permit expires, and (2) the estimated date for re-issuance and/or modification.

(d) A tracking list of District waters for which EPA has approved or established TMDL s. The list will indicate for each such water and pollutant whether, based on new data or information, applicable water quality standard(s) have been met. Waters and pollutants for which EPA has approved or established TMDL s under this Decree will be maintained on this tracking list until such data shows that the applicable water quality standards have been met for one year.

#### **VI. SECURING COURT APPROVAL**

7. The parties agree to join in and support such legal proceedings as necessary to secure the Court's approval and entry of this Consent Decree.

## **VII. EFFECTIVE DATE**

8. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court does not enter this Consent Decree, this Consent Decree shall not become effective.

## **VIII. TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS**

9. This Consent Decree shall terminate after fulfillment of the obligations in Paragraph 5 this Consent Decree. Upon termination of this Consent Decree, Counts 4 and 5 shall be dismissed without prejudice. The parties jointly shall file the appropriate notice with the Court so that the Clerk of the Court may close the file. Said dismissal will not operate to preclude any of the claims reserved by Plaintiffs in Paragraph 23 below.

## **IX. FORCE MAJEURE**

10. The parties recognize that the performance of this Consent Decree is subject to fiscal

and procurement laws and regulations of the United States, which include but are not limited to the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Consent Decree. Such situations include, but are not limited to, a government shutdown such as occurred in 1995 and 1996 or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree and any deadlines occurring within 120 days of the termination of the delay shall be extended one day for each day of the delay. EPA will provide Plaintiffs with notice (including a description of the facts

which EPA's invocation of this provision is based) as soon as possible under the circumstances when it learns the facts upon which EPA seeks to invoke this provision, and then with reasonably prompt notice of the termination of the force majeure event. Plaintiffs may challenge the invocation of this term of the Consent Decree under the dispute resolution terms of Paragraph 11 of this Consent Decree. If challenged, EPA shall have the burden to demonstrate that force majeure was appropriately invoked.

#### **X. DISPUTE RESOLUTION**

11. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or at such time thereafter as is mutually agreed.

If the parties are unable to resolve the dispute, then either party may petition the Court to resolve the dispute.

#### **XI. EXTENSIONS AND MODIFICATIONS**

12. Any dates set forth in this Consent Decree may be modified by written agreement of the parties and notice to the Court. To the extent the parties are not able to agree to a modification, EPA may seek a modification of this Consent Decree in accordance with the procedures specified below.

(a) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling more than 30 days and provides notice to the Plaintiffs of the requested

**modification and the reasons then known for said modification at least 30 days prior to filing said motion, and files the motion at least 60 days prior to the date for which modification is sought, then the**

**filing of such motion shall, upon request, automatically stay the date for which modification is sought. Such automatic stay shall remain in effect until the earlier to occur of (1) a dispositive ruling by this Court on such motion, or (2) the date sought in such motion, or (3) 90 days after the date sought to be modified.**

**(b) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling 30 days or less, provides notice to the Plaintiffs of the requested modification and the reasons then known for said modification at least 15 days prior to the filing of the motion, and files the motion at least 7 days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically stay the date for which modification is sought. Such stay shall remain in effect until the earlier to occur of (1) a dispositive ruling by the Court on such motion, or (2) the date sought in the modification.**

**(c) If EPA seeks modification of a date or dates established by this Consent Decree and does not provide notice pursuant to subparagraphs (a) or (b) above, then any such request for modification shall state why EPA could not have utilized the modification procedures set forth in subparagraphs (a) or (b) above. EPA shall give notice to the Plaintiffs as soon as reasonably possible of its intent to seek a modification and/or stay of the date sought to be modified, and of the reasons known for said modification. The filing of a request pursuant to this subparagraph shall not act to stay the date or dates sought to be modified.**

**(d) After following the procedures of subparagraphs (a), (b) or (c) above, EPA may move for additional relief, including stays of dates that are the subject of pending motions to modify, this Consent Decree.**

(e) If the Court denies a motion by EPA to modify a date established by this Consent Decree, then the date for performance for which modification has been requested shall be such date as the Court may specify.

(f) Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration. The parties to this Consent Decree shall join in any such motion for expedited consideration.

13. This Consent Decree may be modified by written agreement of the parties and approval of the Court. Nothing in this Consent Decree, or in the parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms upon a showing of good cause by any party. Good cause includes, but is not limited to, changes in the law or regulations implementing CWA Section 303 that affect EPA's commitments under this Consent Decree. In EPA's view, the failure of Congress to appropriate sufficient funds to meet its obligations in this Decree would constitute good cause for the modification of this Decree. EPA shall have the burden to demonstrate good cause. The Plaintiffs reserve their rights to object to such request for modification.

#### XII. NOTICE

14. Any notice required or made with respect to this Consent Decree shall be in writing and shall be effective upon receipt. For any matter relating to this Consent Decree, the contact

persons are : For the Plaintiffs:

Howard I. Fox

Earthjustice Legal Defense Fund

1625 Massachusetts Ave, N. W., Suite 702  
Washington, D.C. 20036-2212



**For the United States:**

**Associate General Counsel, Water Law Office,  
Office of General Counsel (2355A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460**

**Christopher Day**

**Office of Regional Counsel (3RC20)**

**U.S. Environmental Protection Agency - Region 3  
1650 Arch Street  
Philadelphia, PA 19103  
and**

**Chief**

**Environmental Defense Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 23986**

**Washington, D.C. 20026-3986**

**Upon written notice to the other parties, any party may designate a successor contact person for matter relating to this Consent Decree.**

**XIII. SCOPE OF JUDICIAL REVIEW**

**15. Nothing in the terms of this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Consent Decree, except for the purpose of determining EPA's compliance with the terms of this Consent Decree. Nothing in this Consent Decree alters or affects the standards for judicial review of final EPA action.**

#### **XIV. AGENCY DISCRETION**

16. Except as expressly provided herein, or in any supplement to this Consent Decree, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act, 33 U.S.C. §§ 1251-1387, or by general principles of administrative law, including EPA's discretion to revise, amend or promulgate regulations, or to alter, amend, or revise from time to time any actions EPA may perform pursuant to this Decree. This paragraph does not accord EPA the discretion to change any of its obligations under this Decree.

#### **XV. REPRESENTATIVE AUTHORITY**

17. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree. By signature below, Plaintiffs and EPA consent to entry of this Consent Decree.

#### **XVI. SEVERABILITY**

18. The various terms, paragraphs, and sections contained herein shall be deemed separable and separable. If any provision of this Consent Decree is deemed invalid or unenforceable, the balance of the Consent Decree shall remain in full force and effect.

#### **XVII. ENTIRE AGREEMENT**

19. This Consent Decree is the entire agreement between Plaintiffs and EPA in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Consent Decree.

## **XVIII. MUTUAL DRAFTING**

20. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent

Decree.

## **XIX. COUNTERPARTS**

21. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

## **XX. RELEASE BY PLAINTIFFS**

22. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a complete and final settlement of all claims which were asserted by Plaintiffs against United States in Counts 4 and 5 of the complaint filed in this case. Plaintiffs hereby release, discharge and covenant not to assert (by way of the commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or may now or hereafter have, against the United States based upon matters which were asserted by Plaintiffs in Counts 4 and 5 of the complaint filed in this case. This paragraph shall not operate to preclude any of the items enumerated in Paragraph 23 below.

## XXI. PLAINTIFFS' RESERVATION OF RIGHTS

23. This Consent Decree does not waive or limit in any way Plaintiffs' rights except as expressly provided in this Consent Decree. Nothing in this Consent Decree shall be construed to waive, or limit Plaintiffs' right to challenge or file suit on (a) any Section 303(d) List for District waters (including the removal of previously listed waters), whether such Section 303(d) List is prepared by the District or by the EPA; (b) any TMDL s (including EPA decisions establishing or approving TMDL s), whether such TMDL s are submitted by the District and approved by EPA or are established by EPA; (c) EPA's failure to approve or disapprove any final TMDL submitted by the District, or to establish a TMDL after disapproving a TMDL submitted by the District; (d) the issuance, reissuance, modification or revocation and reissuance (or failure to accomplish same) of NPDES permits; or (e) the issuance or revision of any regulations, standards or other final agency action promulgated or taken by EPA. EPA reserves any defenses that it may have to such challenges or suits.

## XXII. USE OF CONSENT DECREE

24. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability either on the part of the United States, its officers, or any person affiliated with it, or on the part of Plaintiffs.

## XXIII. COMPLIANCE WITH OTHER LAWS

25. Nothing in this Consent Decree relieves EPA of the obligation to act in a manner consistent with applicable Federal, State or local law, including the notice and comment and other provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-599, 701-706, and applicable appropriations and law. No provisions of this Consent Decree shall be interpreted as or constitute a

commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

#### XXIV. MODIFICATION TO REGULATIONS

26. As this Consent Decree is being negotiated, EPA is undertaking rulemaking to change the Agency's TMDL regulations. In the event of future regulatory changes that any party believes will affect compliance with this Consent Decree, the parties will attempt to agree on appropriate changes to this Consent Decree. The definitions section of this Consent Decree contemplates such future regulatory changes; nevertheless, a party or parties may believe that those changes will affect compliance with the commitments in this Consent Decree. In such an event, the parties agree to negotiate in good faith and not to withhold unreasonably consent to changes in this Consent Decree.

#### XXV. APPLICABLE LAW

27. This Consent Decree shall be governed and construed under the laws of the United States.

#### XXVI. THIRD-PARTY BENEFICIARIES

28. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

#### XXVII. COSTS

29. (a) EPA agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs accrued as of the effective date of this Consent Decree on the claims asserted in Counts 4 and 5 of their complaint. Plaintiffs shall provide EPA with any request for attorney's fees and costs within 60 days of the effective date of this Consent Decree. Following the Plaintiffs' request, the parties will

attempt to reach agreement as to the appropriate amount of Plaintiffs' fees and costs within 120 days of the effective date of this Consent Decree. If the parties are not able to reach agreement, Plaintiffs shall file any motion for fees and costs within 150 days of the effective date of this Consent Decree. EPA shall file its response within 45 days after service of Plaintiffs' motion, and Plaintiffs shall file their response within 14 days after service of EPA's response. These deadlines may be changed by written agreement of the parties and notice to the Court.

(b) The Court will retain jurisdiction to resolve any request for attorney's fees and costs incurred in connection with the implementation of this Consent Decree, notwithstanding any dismissal pursuant to Paragraph 9 above. The parties reserve their rights to oppose any such request.

SO AGREED.

FOR PLAINTIFFS KINGMAN PARK CIVIC ASSOCIATION, FRIENDS OF THE EARTH,  
AND ANACOSTIA WATERSHED SOCIETY:

Dated: June 9, 2000

~'~

HOWARD FOX

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**FOR DEFENDANTS UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND  
CAROL M. BROWNER, ADMINISTRATOR:**

**LOIS J. SCHIFFER Assistant Attorney  
General, Environment and Natural Resources  
Division, U.S. Department of Justice  
Washington, DC 20530**

Dated: June 8  
2000

By:



**SCOTT J. JORDAN  
Environmental Defense Section Environment  
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**Attorneys for United States Environmental Protection  
Agency, and Carol M. Browner, Administrator,**

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Philadelphia, PA 19103**



**ORDER**

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this

Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The foregoing Consent Decree is hereby APPROVED.

  
  
COLLEEN KOLLAR-KOTELLY  
United States District Judge

Dated: 